

## HOUSE BILL NO. 422

INTRODUCED BY D. GALLIK

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA FAMILIES SELF-SUFFICIENCY WAGE ACT; REQUIRING AN EMPLOYER WHO RECEIVES PUBLIC FINANCIAL ASSISTANCE TO PROVIDE A WAGE THAT IS, AT A MINIMUM, EQUAL TO EITHER 70 PERCENT OF THE STATE'S ANNUAL AVERAGE WEEKLY WAGE IF THE EMPLOYER PROVIDES AN EMPLOYEE GROUP HEALTH PLAN OR 75 PERCENT OF THE STATE'S ANNUAL AVERAGE WEEKLY WAGE IF THE EMPLOYER DOES NOT PROVIDE AN EMPLOYEE GROUP HEALTH PLAN; PROVIDING DEFINITIONS; ALLOWING AN EMPLOYEE TO FILE A WAGE CLAIM; PROVIDING DUTIES FOR PUBLIC FINANCIAL ASSISTANCE PROVIDERS; PROVIDING MONITORING AND OTHER DUTIES FOR THE DEPARTMENT OF LABOR AND INDUSTRY; PROVIDING PENALTIES; PROVIDING A LIMITED WAIVER FOR FEDERAL ASSISTANCE PROGRAMS; SUBSUMING OTHER STATE WAGE PROGRAMS UNDER THIS PROGRAM IF APPLICABLE; AUTHORIZING ACCESS TO CERTAIN TAX INFORMATION FOR VERIFICATION PURPOSES; AMENDING SECTIONS 15-30-249, 15-30-303, AND 15-31-511, MCA; AND PROVIDING AN APPLICABILITY DATE."

WHEREAS, the State of Montana provides grants, loans, tax incentives, and other forms of financial assistance to businesses, resulting in the creation, expansion, or maintenance of a wide variety of employment opportunities; and

WHEREAS, the State of Montana has limited taxpayer resources to devote to economic development; and

WHEREAS, the use of taxpayer dollars to promote the sustenance and creation of jobs paying self-sufficiency wages can increase consumer income, decrease levels of poverty, and reduce the need for taxpayer-funded public assistance for families; and

WHEREAS, it is in the interest of the State of Montana and its people to target the limited resources available for economic development to those businesses that enable families to remain off the state's public assistance rolls by paying wages sufficient to procure life's basic necessities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1        **NEW SECTION. Section 1. Short title.** [Sections 1 through 8] may be cited as the "Montana Families  
2 Self-Sufficiency Wage Act".

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4        **NEW SECTION. Section 2. Definitions.** As used in [sections 1 through 8], the following definitions  
5 apply:

6            (1) "Agency" has the meaning provided in 2-18-101.

7            (2) "Department" means the department of labor and industry provided for in 2-15-1701.

8            (3) (a) "Employee" means a worker who works 35 hours or more during a scheduled 5-day workweek  
9 and is employed by an employer who is receiving public financial assistance.

10           (b) The term does not include the owner of the business.

11           (4) (a) "Employer" means the owner of a private, for-profit or not-for-profit business who is receiving  
12 public financial assistance.

13           (b) The term does not include a public agency as defined in 18-11-102.

14           (5) "Group health plan" has the meaning provided in 33-22-140.

15           (6) "Public financial assistance" means the total of any grant, loan, tax incentive, tax credit or abatement,  
16 bond financing, subsidy, or other form of assistance of \$40,000 or more in a calendar year that is provided by  
17 an agency or by a commercial lending institution authorized to participate in a state program to an employer for  
18 the initiation, continuation, or expansion of a business located in the state and that results in a direct financial  
19 benefit to the employer.

20           (7) (a) "Self-sufficiency wage" means a pay rate, adjusted annually pursuant to subsection (7)(b), that  
21 is equal to:

22           (i) 70% of the state's annual average weekly wage, as determined by the department in its quarterly  
23 census of employment and wages for unemployment insurance purposes, if the employer provides an employee  
24 group health plan to part-time and full-time employees; or

25           (ii) 75% of the state's annual average weekly wage, as determined by the department in its quarterly  
26 census of employment and wages for unemployment insurance purposes, if the employer does not provide an  
27 employee group health plan to part-time and full-time employees.

28           (b) Starting June 1, 2006, the pay rate described in subsection (7)(a) must be adjusted each year in  
29 June to use the previous year's annual average weekly wage in calculating pay rates under subsection (7)(a)(i)  
30 or (7)(a)(ii).

1  
2       **NEW SECTION. Section 3. Obligations of employer receiving public financial assistance.** (1) (a)

3       An employer who receives public financial assistance and who provides an employee group health plan to  
4       part-time and full-time employees shall, within 6 months after receipt of the public financial assistance, pay each  
5       employee a wage that is equal to or greater than a self-sufficiency wage determined pursuant to [section  
6       2(7)(a)(i)].

7       (b) An employer who receives public financial assistance but does not provide an employee group health  
8       plan to part-time and full-time employees shall, within 6 months after receipt of the public financial assistance,  
9       pay each employee a wage that is equal to or greater than a self-sufficiency wage determined pursuant to  
10      [section 2(7)(a)(ii)].

11      (2) The employer shall continue to pay a self-sufficiency wage, revised annually, throughout the longest  
12      of:

13      (a) the period in which the employer receives public financial assistance;

14      (b) the period in which the employer is making payments under the terms set forth for receiving the  
15      public financial assistance; or

16      (c) a period of 10 years.

17      (3) The employer shall provide the department, on a form prescribed by and provided by the department,  
18      with information that helps the department verify compliance, including:

19      (a) the name, social security number, and date of hire of each employee;

20      (b) the date on which the employer received the public financial assistance; and

21      (c) the length of the employee's pay period and the rate of individual compensation.

22      (4) During the period, determined pursuant to subsection (2), in which the employer is obligated to pay  
23      a self-sufficiency wage, the employer shall file biannual reports with the department. If the employer  
24      demonstrates compliance with the self-sufficiency wage requirement for a 2-year period, the department may,  
25      upon the employer's application for less frequent reporting periods, extend the reporting period to a period not  
26      to exceed 1 year.

27      (5) If an employer is receiving public financial assistance, an employer shall, upon receipt of the  
28      assistance, post in a conspicuous place at each worksite maintained by the employer a notice provided by the  
29      department informing all employees that the employer is receiving public financial assistance and is obligated  
30      to pay at least a self-sufficiency wage. The notice must also provide contact information at the department for

an employee to learn the current self-sufficiency wage.

**NEW SECTION. Section 4. Employee wage claim.** An employee who believes that an employer has failed to pay a self-sufficiency wage, as required under [section 3], may file a wage claim with the department pursuant to this chapter.

**NEW SECTION. Section 5. Obligations of public financial assistance provider.** (1) Prior to providing public financial assistance to an employer, an agency or lending institution shall:

(a) contact the department by July 1 of each year to verify the self-sufficiency wage for the calendar year; and

(b) include in any application materials for public financial assistance a statement that:

(i) an employer who receives public financial assistance is required to pay a self-sufficiency wage as one condition of receiving the assistance; and

(ii) an employer who receives public financial assistance and fails to pay a self-sufficiency wage is subject to penalties that include the loss of some or all of the public financial assistance.

(2) After approving an application for public financial assistance, an agency or lending institution shall forward a copy of the approved application to the unit of the department that is responsible for enforcing wage and hour laws.

**NEW SECTION. Section 6. Obligations of department.** (1) The department shall:

(a) monitor the approved applications for those employers who receive public financial assistance from an agency or lending institution for compliance with [sections 1 through 8]; and

(b) post electronically on the department's website the self-sufficiency wage as updated annually.

(2) The department may institute actions as provided in this chapter if the department determines that an employer receiving public financial assistance has not paid the self-sufficiency wage.

**NEW SECTION. Section 7. Enforcement -- penalties.** (1) An employer who violates the requirement to pay a self-sufficiency wage, in addition to other payments required under the terms of the public financial assistance, shall return to the appropriate agency or lending institution:

(a) for a first violation in any calendar year, 15% of the total public financial assistance received in the

1 calendar year or 15% of the total public financial assistance, whichever is more;

2 (b) for a second violation in any subsequent calendar year, 30% of the total public financial assistance  
3 received in the calendar year or 30% of the total public financial assistance, whichever is more; and

4 (c) for a third violation in any 3 calendar years, all of the public financial assistance not returned as a  
5 result of a first or second violation, and the public financial assistance must be terminated. The employer is liable  
6 for back wages and penalties owed to each affected employee.

7 (2) An employer on whom the penalty provision in subsection (1)(c) is imposed is ineligible to apply for  
8 or receive public financial assistance for a period of 5 years.

9 (3) If the department determines that an employer receiving public financial assistance is not paying  
10 a self-sufficiency wage as required under [section 3], the department shall:

11 (a) institute actions against the employer for the collection of unpaid wages and penalties for each  
12 affected employee; and

13 (b) notify in writing the appropriate agency or lending institution of its determination.

14 (4) Upon receiving written notification by the department that an employer is not paying the required  
15 self-sufficiency wage, the agency or lending institution shall notify the employer in writing and require the  
16 employer to return the portion of the public financial assistance specified in subsection (1)(a), (1)(b), or (1)(c).

17 (5) An agency or lending institution may initiate legal action against an employer who violates the  
18 provisions of [sections 1 through 8] to obtain reimbursement of all or any portion of public financial assistance  
19 provided. The agency or lending institution is also entitled to reimbursement for attorney fees and court costs.

20  
21 **NEW SECTION. Section 8. Limited waiver.** (1) [Sections 1 through 8] do not apply if otherwise  
22 precluded by federal laws regarding public financial assistance.

23 (2) The provisions of [sections 1 through 8] may not be waived by any state public financial assistance  
24 program. A conflict involving the minimum wage, the annual average weekly wage, and [sections 1 through 8]  
25 must be resolved in favor of [sections 1 through 8] if the employer is receiving public financial assistance.

26  
27 **Section 9.** Section 15-30-249, MCA, is amended to read:

28 **"15-30-249. Confidentiality -- exceptions -- penalty.** (1) ~~Reports~~ Except as provided in subsection  
29 ~~(2), reports~~ and returns required to be filed under this part are confidential, subject to the limitations contained  
30 in 39-51-603(3) and (4).

1       (2) (a) The reports and returns required to be filed under this part by recipients of \$40,000 or more in  
2       a calendar year of any tax incentive, tax credit, or abatement described in [section 2(6)] may be released to the  
3       department of labor and industry for the purposes of determining whether [sections 1 through 8] apply and, if  
4       applicable, compliance with [sections 1 through 8].

5       (b) The information obtained by the department under this subsection (2) must be held confidential and  
6       may not be published or be open to public inspection, except that:

7       (i) public employees in the performance of public duties in determining compliance with [sections 1  
8       through 8] may review the information; and

9       (ii) the department of labor and industry may cite in court records information regarding an employing  
10       entity, excluding social security numbers or taxpayer identification numbers, related to any action taken under  
11       [section 6(2)].

12       (c) A public employee who violates a provision of this section:

13       (i) must be dismissed from office and may not hold any public office in this state for a period of 1 year  
14       after dismissal; and

15       (ii) shall be fined an amount not more than \$1,000 or be imprisoned in the county jail for a term not  
16       exceeding 1 year, or both."

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18       **Section 10.** Section 15-30-303, MCA, is amended to read:

19       **"15-30-303. Confidentiality of tax records.** (1) Except as provided in subsections (7) and (8) or in  
20       accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make known  
21       in any manner:

22       (a) the amount of income or any particulars set forth or disclosed in any individual report or individual  
23       return required under this chapter or any other information secured in the administration of this chapter; or

24       (b) any federal return or federal return information disclosed on any return or report required by rule of  
25       the department or under this chapter.

26       (2) (a) The officers charged with the custody of the reports and returns may not be required to produce  
27       them or evidence of anything contained in them in an action or proceeding in a court, except in an action or  
28       proceeding:

29       (i) to which the department is a party under the provisions of this chapter or any other taxing act; or

30       (ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes

1 when the reports or facts shown by the reports are directly involved in the action or proceedings.

2 (b) The court may require the production of and may admit in evidence only as much of the reports or  
3 of the facts shown by the reports as are pertinent to the action or proceedings.

4 (3) This section does not prohibit:

5 (a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any return  
6 or report filed in connection with the taxpayer's tax;

7 (b) the publication of statistics classified to prevent the identification of particular reports or returns and  
8 the items of particular reports or returns; or

9 (c) the inspection by the attorney general or other legal representative of the state of the report or return  
10 of any taxpayer who brings an action to set aside or review the tax based on the report or return or against whom  
11 an action or proceeding has been instituted in accordance with the provisions of 15-30-311.

12 (4) Reports and returns must be preserved for at least 3 years and may be preserved until the  
13 department orders them to be destroyed.

14 (5) Any offense against subsections (1) through (4) is punishable by a fine not exceeding \$1,000 or by  
15 imprisonment in the county jail for a term not exceeding 1 year, or both. If the offender is an officer or employee  
16 of the state, the offender must be dismissed from office and may not hold any public office in this state for a  
17 period of 1 year after dismissal.

18 (6) This section may not be construed to prohibit the department from providing taxpayer return  
19 information and information from employers' payroll withholding reports to:

20 (a) the department of labor and industry to be used for the purpose of investigation and prevention of  
21 noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws; or

22 (b) the state fund to be used for the purpose of investigation and prevention of noncompliance, fraud,  
23 and abuse under the workers' compensation program.

24 (7) The department may permit the commissioner of internal revenue of the United States or the proper  
25 officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either  
26 officer to inspect the return of income of any individual or may furnish to the officer or an authorized  
27 representative an abstract of the return of income of any individual or supply the officer with information  
28 concerning an item of income contained in a return or disclosed by the report of an investigation of the income  
29 or return of income of an individual, but the permission may be granted or information furnished only if the  
30 statutes of the United States or of the other state grant substantially similar privileges to the proper officer of this

1 state charged with the administration of this chapter.

2 (8) The department shall furnish:

3 (a) to the department of justice all information necessary to identify those persons qualifying for the  
4 additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the department of  
5 justice to administer the provisions of 61-5-105;

6 (b) to the department of public health and human services information acquired under 15-30-301,  
7 pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public  
8 assistance fraud and abuse, provided notice to the applicant has been given;

9 (c) to the department of labor and industry for the purpose of:

10 (i) prevention and detection of fraud and abuse in and eligibility for benefits under the unemployment  
11 compensation and workers' compensation programs information on whether a taxpayer who is the subject of  
12 an ongoing investigation by the department of labor and industry is an employee, an independent contractor,  
13 or self-employed; and

14 (ii) determining compliance with [sections 1 through 8] information on whether a taxpayer who receives  
15 \$40,000 or more in a calendar year of public financial assistance, as described in [section 2(6)], is required to  
16 pay a self-sufficiency wage pursuant to [sections 1 through 8];

17 (d) to the department of fish, wildlife, and parks specific information that is available from income tax  
18 returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and  
19 fishing licenses;

20 (e) to the board of regents information required under 20-26-1111;

21 (f) to the legislative fiscal analyst and the office of budget and program planning individual income tax  
22 information as provided in 5-12-303. The information provided to the office of budget and program planning must  
23 be the same as the information provided to the legislative fiscal analyst.

24 (g) to the department of transportation farm income information based on the most recent income tax  
25 return filed by an applicant applying for a refund under 15-70-223 or 15-70-362, provided that notice to the  
26 applicant has been given as provided in 15-70-223 and 15-70-362. The information obtained by the department  
27 of transportation is subject to the same restrictions on disclosure as are individual income tax returns."

28  
29 **Section 11.** Section 15-31-511, MCA, is amended to read:

30 **"15-31-511. Confidentiality of tax records.** (1) Except as provided in this section in accordance with



1 a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

2 (a) the amount of income or any particulars set forth or disclosed in any return or report required under  
3 this chapter or any other information relating to taxation secured in the administration of this chapter; or

4 (b) any federal return or information in or disclosed on a federal return or report required by law or rule  
5 of the department of revenue under this chapter.

6 (2) (a) An officer or employee charged with custody of returns and reports required by this chapter may  
7 not be ordered to produce any ~~of them~~ return or report or evidence of anything contained in ~~them~~ either in any  
8 administrative proceeding or action or proceeding in any court, except:

9 (i) in an action or proceeding in which the department is a party under the provisions of this chapter;  
10 or

11 (ii) in any other tax proceeding or on behalf of a party to an action or proceeding under the provisions  
12 of this chapter when the returns or reports or facts shown in them are directly pertinent to the action or  
13 proceeding.

14 (b) If the production of a return, report, or information contained in ~~them~~ a return or report is ordered,  
15 the court shall limit production of and the admission of returns, reports, or facts shown in them to the matters  
16 directly pertinent to the action or proceeding.

17 (3) This section does not prohibit:

18 (a) the delivery of a certified copy of any return or report filed in connection with a return to the taxpayer  
19 who filed the return or report or to the taxpayer's authorized representative;

20 (b) the publication of statistics prepared in a manner that prevents the identification of particular returns,  
21 reports, or items from returns or reports;

22 (c) the inspection of returns and reports by the attorney general or other legal representative of the state  
23 in the course of an administrative proceeding or litigation under this chapter;

24 (d) access to information under subsection (4); or

25 (e) the director of revenue from permitting a representative of the commissioner of internal revenue of  
26 the United States or a representative of a proper officer of any state imposing a tax on the income of a taxpayer  
27 to inspect the returns or reports of a corporation. The department may also furnish those persons abstracts of  
28 income, returns, and reports; information concerning any item in a return or report; and any item disclosed by  
29 an investigation of the income or return of a corporation. The director of revenue may not furnish that information  
30 to a person representing the United States or another state unless the United States or the other state grants

substantially similar privileges to an officer of this state charged with the administration of this chapter.

(4) The department shall on request:

(a) allow the inspection of returns and reports by the legislative auditor, but the information furnished to the legislative auditor is subject to the same restrictions on disclosure outside that office as provided in subsection (1); ~~and~~

(b) deliver corporation income tax data to the legislative fiscal analyst and the office of budget and program planning, but the information furnished to the legislative fiscal analyst and the office of budget and program planning is subject to the same restrictions on disclosure outside those offices as provided in subsection (1); and

(c) provide to the department of labor and industry, subject to the same restrictions on disclosure outside the department as provided in subsection (1), any information necessary to determine whether a taxpayer under this section:

(i) is receiving \$40,000 or more in a calendar year of public financial assistance, as described in [section 2(6)];

(ii) is providing group health benefits to employees; and

(iii) is paying employees a self-sufficiency wage as provided for in [sections 1 through 8].

(5) A person convicted of violating this section shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. If a public servant, as defined in 45-2-101, is convicted of violating this section, the person forfeits office and may not hold any public office or public employment in the state for a period of 1 year after conviction."

**NEW SECTION. Section 12. Codification instruction.** [Sections 1 through 8] are intended to be codified as an integral part of Title 39, chapter 3, and the provisions of Title 39, chapter 3, apply to [sections 1 through 8].

**NEW SECTION. Section 13. Applicability.** [This act] applies to contracts involving public financial assistance granted on or after January 1, 2006.

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